

<p>This Opinion is Not a Precedent of the TTAB</p>

Mailed: January 10, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Banks DIH Ltd.

Serial No. 88761927

David B. Sunshine of Cozen O'Connor for Banks DIH Ltd.

J. Ian Dible, Trademark Examining Attorney, Law Office 111,
Chris Doninger, Managing Attorney.

Before Zervas, Cataldo and Goodman,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Applicant, Banks DIH Ltd., seeks registration on the Principal Register of the mark D'AGUIAR'S (in standard characters), identifying the following goods: "biscuits; cereal-based snack foods; crackers," in International Class 30; "bottled water; soft drinks," in International Class 32; and "brandy; liqueurs, in International Class 33.¹

¹ Application Serial No. 88761927 was filed on January 16, 2020, based upon Applicant's allegation of a bona fide intent to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b) as to all three classes of goods.

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(e)(4) of the Trademark Act, 15 U.S.C. § 1052(e)(4), on the ground that the proposed mark is primarily merely a surname.

When the refusal was made final, Applicant appealed. Applicant and the Examining Attorney filed briefs.² We affirm the refusal to register.

Section 2(e)(4) of the Trademark Act provides that absent a showing of acquired distinctiveness under Section 2(f), 15 U.S.C. § 1052(f), registration on the Principal Register must be refused if the proposed mark is "primarily merely a surname."³ A term is primarily merely a surname if, when viewed in relation to the goods or services for which registration is sought, its primary significance as a whole to the purchasing public is that of a surname. *Earnhardt v. Kerry Earnhardt, Inc.*, 864 F.3d 1374, 123 USPQ2d 1411 (Fed. Cir. 2017); *see also In re Beds & Bars Ltd.*, 122 USPQ2d

² The exhibits attached to Applicant's brief will not be considered. Any exhibits that were not made of record during examination are untimely. *See, e.g., In re District of Columbia*, 101 USPQ2d 1588, 1591-92 (TTAB 2012). Any exhibits that were made of record during examination are redundant and unnecessary.

Page references herein to the application record refer to the .pdf version of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs refer to the Board's TTABVUE docket system. Before the TTABVUE designation is the docket entry number; and after this designation are the page references, where applicable.

In an administrative order issued on October 1, 2021, the Board granted the Senior Trademark Examining Attorney's motion to accept the Examining Attorney's late-filed brief. Applicant's brief appears at 7 TTABVUE and its reply brief appears at 12 TTABVUE. The Examining Attorney's brief appears at 10 TTABVUE.

³ Applicant has not claimed - in the alternative - that D'AGUIAR'S has acquired distinctiveness as a mark under Trademark Act Section 2(f). Nor has Applicant amended the application to seek registration on the Supplemental Register.

1546, 1548 (TTAB 2017); *In re Eximius Coffee, LLC*, 120 USPQ2d 1276, 1277 (TTAB 2016); *In re Integrated Embedded*, 120 USPQ2d 1504, 1505-6 (TTAB 2016).

Various inquiries may be considered in the factual determination of whether the purchasing public would perceive a proposed mark as primarily merely a surname. These considerations “are examples of inquiries that may lead to evidence regarding the purchasing public’s perception of a term’s primary significance. These inquiries or ‘factors’ are not exclusive and any of these singly or in combination and any other relevant circumstances may shape the analysis in a particular case.” *Azeka Building Corp. v. Azeka*, 122 USPQ2d 1477, 1480 (TTAB 2017); *see also In re Colors in Optics, Ltd.*, 2020 USPQ2d 53784 at *1-2; *In re Eximius Coffee, LLC*, 120 USPQ2d at 1277.

The following inquiries are relevant in this case: the extent to which the term is used by others as a surname – often referred to as “rarity;” whether the term has a non-surname, “ordinary language” meaning; whether anyone connected with Applicant uses the term as a surname; and whether the term has the structure and pronunciation of a surname.⁴ *See In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652, 653-54 (Fed. Cir. 1985); *Eximius Coffee*, 120 USPQ2d at 1278 n.4 (reviewing factors from *Darty* and *In re Benthin Mgmt. GmbH*, 37 USPQ2d 1332, 1333-34 (TTAB 1995) and noting there is no need to discuss other inquiries for which the record lacks relevant evidence); *In re Adlon Brand GmbH & Co.*, 120 USPQ2d

⁴ The proposed mark in this case is displayed in standard characters. As discussed below, it is unnecessary to consider whether any stylization of the lettering is distinctive enough to create a separate commercial impression. *In re Yeley*, 85 USPQ2d 1150, 1151 (TTAB 2007); *Integrated Embedded*, 120 USPQ2d at 1506 n.4.

1717, 1719 & 1721 (TTAB 2016) (noting the consideration, if there is relevant supporting evidence of record, “of an alternative perceived meaning (which may include the perception of the mark as a coined term)”).

We conduct our analysis from the perspective of the purchasing public, in this case, ordinary purchasers of food and beverage products, because “it is that impact or impression which should be evaluated in determining whether or not the primary significance of a word when applied to a product is a surname significance.” *In re Harris-Intertype Corp.*, 518 F.2d 629, 186 USPQ 238, 239 (CCPA 1975) (quoting *Ex parte Rivera Watch Corp.*, 106 USPQ 145, 149 (Comm’r Pat. 1955)).

In support of the refusal, the Examining Attorney introduced the following evidence:

- Search results from the LexisNexis database showing 238 entries for the surname “D’Aguiar,” with 10 listings made of record. *See* April 3, 2020 first Office Action at 5.
- Pages from Applicant’s website stating that “The D’Aguiar family has been in business in Guyana for over 150 years. Mr. Jose D’Aguiar, the founder, started a Rum Business which developed into a chain of Retail Spirit Shops.” *Id.* at 6-7.
- An additional page from Applicant’s website and an entry from Wikipedia.org discussing the history of the D’Aguiar family and its ongoing financial and ownership interest and participation in the operation of Applicant from the 1840s to 1989. The Wikipedia entry also discusses Peter D’Aguiar and Fred D’Aguiar. October 10, 2020 final Office Action at 5-6; May 8, 2021 Denial of Request for Reconsideration at 23-37.
- Search results from the LexisNexis database showing 16,144 entries for the surname “Aguiar,” with 10 listings made of record. *Id.* at 7.

- An entry from Wikipedia.org concerning use of the “nobilary particle” such as “d’,” “de” and “di” in surnames across numerous cultures. *Id.* at 8-12.
- Search results from the LexisNexis database showing 178 entries for the surname “D’Aguilar,” 17,310 entries for the surname “Aguiar,” and 31,127 entries for the surname “Aguilar” with 10 listings made of record for each. May 8, 2021 Denial of Request for Reconsideration at 4-6.
- Pages from websites from various businesses owned by individuals named “D’Agostino,” D’Allesandro,” D’Amico,” D’Amore,” D’Angelo,” D’Annunzio,” D’Arcy,” and “D’Errico.” *Id.* at 7-25.
- Search results from the LexisNexis database showing 288 entries for the surname “D’Allesandro,” 185 individuals with the surname “D’Agastino,” 25,880 individuals with the surname “D’Amico,” 6,379 individuals with the surname “D’Amore,” 24,124 individuals with the surname “D’Angelo,” 830 individuals with the surname “D’Annunzio,” 10,497 individuals with the surname “D’Arcy,” and 2,601 individuals with the surname “D’Errico,” with 10 listings made of record for each. *Id.* at 26-33.

In support of its arguments in favor of registration, Applicant introduced the following evidence:

- An entry from Wikipedia.org concerning Quintiães e Aguiar, a civil parish in the municipality of Barcelos, Portugal. October 5, 2020 Response to Office Action at 7-8, 12-13.
- Pages from The Weather Channel weather.com website displaying the forecast for Aguiar, Spain. *Id.* 9-10.
- A page from TripAdvisor.com discussing the best restaurants in Pereiro de Aguiar, Spain. *Id.* at 14.
- A page from Remax.com listing a property located in Quintiães e Aguiar, Barcelos, Portugal. *Id.* 15.
- Pages from the website of Sociedad Textil Lonia, a clothing and accessory design and production company located in Pereiro de Aguiar, Spain. *Id.* at 16-18.

- An article from Guyana Times (GuyanaTimesgy.com) regarding Applicant and its products. *Id.* at 20-21.
- Pages from a third-party commercial website offering Applicant's rum products for sale. *Id.* at 22-26.
- A screenshot from TTABVUE regarding its prior, abandoned, application for D'AGUIAR'S. April 12, 2021 Request for Reconsideration at 8.
- A page from Surnames.BehindTheName.com showing "Daguiar" ranked 114,424 out of 162,253 surnames in the United States. *Id.* at 9.

A. D'AGUIAR is a surname.

The evidence of record demonstrates that D'Aguiar is an actual surname. We are not concerned that the evidence of record shows "D'Aguiar" as a surname while Applicant's mark is D'AGUIAR'S. The surname significance of a term is not diminished by the fact that the term is presented in its plural or possessive form. *See In re Binion*, 93 USPQ2d 1531 (TTAB 2009) (holding BINION and BINION'S primarily merely a surname); *In re Woolley's Petite Suites*, 18 USPQ2d 1810 (TTAB 1991) (holding WOOLLEY'S PETITE SUITES for hotel and motel services primarily merely a surname); *In re McDonald's Corp.*, 230 USPQ 304, 306 (TTAB 1986) (holding MCDONALD'S primarily merely a surname based on a showing of surname significance of "McDonald," the Board noting that "it is clear that people use their surnames in possessive and plural forms to identify their businesses or trades"); *In re Luis Caballero, S.A.*, 223 USPQ 355 (TTAB 1984) (holding BURDONS primarily merely a surname based in part on telephone listings showing surname significance of "Burdon"); *In re Directional Mktg. Corp.*, 204 USPQ 675 (TTAB 1979) (holding

DRUMMONDS primarily merely a surname based on a showing of surname significance of “Drummond”).

Contrary to Applicant’s contentions that “the extreme rarity of D’AGUIAR as a surname is a compelling indication that the refusal should be withdrawn,” (7 TTABVUE 10) no set rule governs the kind or amount of evidence necessary to show that the applied-for mark would be perceived as primarily merely a surname. *Eximius Coffee*, 120 USPQ2d at 1278. We reject Applicant’s argument that the rarity with which D’Aguiar may be encountered as a surname means that the public is unlikely to view D’AGUIAR’S as primarily merely a surname. Even though we observe that the Examining Attorney’s evidence suggests some duplication of individuals bearing the surname D’Aguiar, the evidence of individuals in a number of locations in the United States who bear the D’Aguiar surname show that it “is not so unusual that such significance would not be recognized by a substantial number of persons.” *Darty*, 225 USPQ at 653.

Moreover, even if rarely encountered, “a rare surname is unregistrable if its primary significance to purchasers is a surname.” *Id.* at 1281; *see also In re Industrie Pirelli Societa per Azioni*, 9 USPQ2d 1564, 1566 (TTAB 1988), *aff’d*, 883 F.2d 1026 (Fed. Cir. 1989) (holding that despite the rarity of “Pirelli” as a surname, the relevant public still would view it primarily as a surname). Further, the statutory provision makes no distinction between rare and commonplace surnames. *Adlon*, 120 USPQ2d at 1721; *Eximius Coffee*, 120 USPQ2d at 1282. We do not find persuasive Applicant’s arguments grounded upon the Board’s earlier decisions in *In re Joint-Stock Company*

“*Baik*”, 84 USPQ2d 1921 (TTAB 2007) and *Benthin* (Applicant’s brief; 7 TTABVUE 8-10) because the statute does not create a separate category for marks consisting in whole or in part of rarely encountered surnames as opposed to more commonly encountered surnames.⁵

Applicant argues that “the addition of D’ and ‘S helps to create a separate commercial impression to consumers.” (7 TTABVUE 11.) To the contrary, the Examining Attorney has introduced evidence that D’Aguiar is a recognized surname, and the above noted decisional law indicates that surname significance is not diminished by the possessive D’AGUIAR’S. Further, to the extent Applicant argues that the presence of the letters “D” and “S” in its mark creates a “stylization of lettering...distinctive enough to create a separate commercial impression” (7 TTABVUE 11) Applicant is mistaken. The involved application seeks registration of D’AGUIAR’S in standard characters, without any stylization that would traverse the surname significance of D’Aguiar. *Cf. In re Yeley*, 85 USPQ2d 1150, 1151 (TTAB 2007); *Integrated Embedded*, 120 USPQ2d at 1506 n.4.

⁵ Applicant also points to non-precedential decisions of the Board in support of its position. (7 TTABVUE 9.) The Board does not encourage the practice of citing decisions not designated as precedent because they are not binding on the Board, but such decisions may be cited for whatever persuasive value they might have. *See In re Soc’y of Health & Physical Educators*, 127 USPQ2d 1584, 1587 n.7 (TTAB 2018). *See also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2021).

B. D'AGUIAR is the surname of Applicant's founders, who were active in the company for over a century, and Applicant's website shows contextual use as a surname.

The founder of Applicant and its predecessor, Jose Gomes D'Aguiar, bears the surname, and Applicant publicizes the connection on its website. (October 10, 2020 final Office Action at 5.) Mr. Jose D'Aguiar's wife and four sons continued to operate Applicant's predecessor after Jose D'Aguiar's death in 1893, and in 1934 Peter Stanislaus D'Aguiar took over as Managing Director of Applicant's predecessor until 1989, overseeing the merger that created Applicant and greatly expanding Applicant's operations. *Id.*

Promotional materials touting a founder whose surname is the mark support public perception of the mark primarily as a surname. *Olin Corp.*, 124 USPQ2d at 1332 (citing *Adlon*, 120 USPQ2d at 1722 (finding evidence clearly indicated "that the hotel was named ADLON because that was the surname of its founder, and was subsequently held out as a family operation. It is interlaced with references to persons bearing the surname ADLON who were involved in founding, managing, or promoting the hotel.")); see also *In re Integrated Embedded*, 120 USPQ2d 1504, 1506-07 (TTAB 2016) (applicant's website showing, discussing the credentials of, and enabling visitors to contact, applicant's "Namesake" and Chief Technical Officer Thomas Barr serve to reinforce the primary significance of BARR as a surname in the proposed mark BARR GROUP).

The evidence emphasizes to the public the D'Aguiar family connection to Applicant, and weighs in favor of public perception of Applicant's mark as a surname.

See Miller v. Miller, 105 USPQ2d 1615, 1620 (TTAB 2013) (“That Applicant’s name is [Michele Ballard] MILLER strengthens the inference that the public will perceive the term as a surname.”).

C. D’Aguiar possesses obscure second meanings other than as a surname but those meanings are not applicable in the context of the identified goods and not recognized by US consumers.

Applicant posits that because its evidence establishes that D’Aguiar identifies a parish in Barcelos, Portugal and at least one town in Spain, the non-surname significance undercuts a claim that the proposed mark is primarily merely a surname, and supports its position that “Applicant’s Mark has multiple commercial impressions and thus, consumers will not automatically consider Applicant’s Mark to be a surname.” (7 TTABVUE 10.)

We agree to the extent that the evidence establishes there are non-surname meanings of “D’Aguiar,” but mere existence of other non-surname meanings of a mark does not preclude a finding that it is primarily merely a surname. Rather, we consider to what degree, if any, the public would associate the particular meaning with the goods or services in the application. In this case, Applicant has not submitted any evidence that the towns of D’Aguiar in Spain and Portugal are known to US consumers, let alone possess any notoriety that creates a separate non-surname impression. *See Miller*, 105 USPQ2d at 1621 (“the record is devoid of evidence that the non-surname meanings of MILLER, i.e., a mill operator or a moth, are the primary significance thereof or somehow eclipse its surname significance” in connection with legal services).

Applicant further argues that “D’AGUIAR has transcended its meaning as a surname and is widely considered linked” (7 TTABVUE 10) “with the name of its multi-million dollar company D’Aquiar’s [sic] Industries and Holdings (‘Bank D.I.H’) for short.” (October 5, 2020 Response to Office Action at 3.) Applicant’s evidence from the online article of Guyana Times concerning Applicant and its finances as well as the website Whiskey Exchange offering Applicant’s rum for sale (October 5, 2020 Response to Office Action at 20-26) similarly fail to demonstrate to what extent, if any, these websites are accessed by US consumers or create an impression of D’AGUIAR’S separate from its surname significance.⁶

We thus find that the facts and record in this case are not analogous to those in *In re Sava Research Corp.*, 32 USPQ2d 1380, 1381 (TTAB 1994), wherein the Board found that evidence established a second meaning for “SAVA” as an acronym for “Securing America’s Valuable Assets.” Rather, we find on this record that the asserted association of D’Aguiar with towns in Spain and Portugal is too attenuated to create in the minds of the consuming public such an association between Applicant’s D’AGUIAR’S mark and its goods. Applicant simply offers insufficient evidence why a consumer would associate D’AGUIAR’S with these geographic locations, as opposed to the demonstrated surname meaning. Nor do we find sufficient evidence that Applicant’s notoriety creates a separate, non-surname meaning of the mark that would be associated by US consumers with Applicant’s goods. Particularly

⁶ As noted above in footnote 3, Applicant has not claimed that D’AGUIAR’S has acquired distinctiveness as a mark under Trademark Act Section 2(f), and we do not construe Applicant’s arguments in its brief as asserting or referencing such a claim.

given Applicant's own promotion of D'Aguiar as the surname of its founder and successors who operated Applicant's predecessors for 150 years, we find that the consumers would apply the surname meaning to Applicant's mark.

D. D'AGUIAR'S has the structure and pronunciation of a surname.

Next, we determine whether D'AGUIAR'S has the structure and pronunciation of a surname. "Under this factor, a party may submit evidence that, due to a term's structure and pronunciation, the public would or would not perceive it to have surname significance." *Azeka Bldg. Corp.*, 122 USPQ2d at 1481. Typically, such evidentiary showing would involve proof of other common surnames that are configured similarly and sound similar to the mark. *See Eximius Coffee*, 120 USPQ2d at 1280 (would need proof that other terms with the suffix "OA" are common surnames to show a structure and pronunciation similar to ALDECOA); *Adlon Brand*, 120 USPQ2d at 1724 ("With the possible exception of Ablon and Allon, which differ from ADLON by one letter, the surnames cited are not highly similar in structure to ADLON").

Applicant argues, without evidentiary support, "it is readily apparent that D'AGUIAR unlike other terms which look and sound like surnames, does not have the structure and pronunciation of a surname. Indeed, D'AGUIAR falls with the category of surnames that do not have the appearance of surnames." (7 TTABVUE 11.) The Examining Attorney submitted evidence that D'AGUIAR is similar in structure and pronunciation to more common surnames such as Aguiar (17,310 individuals) and Aguilar (31,127 individuals). (May 8, 2021 Denial of Request for

Reconsideration at 4-6. The Examining Attorney further submitted evidence that “D” is one of many nobiliary particles preceding surnames in numerous cultures. (May 8, 2021 Denial of Request for Reconsideration at 8-12.) Thus, consumers may well be accustomed to encountering D’Aguiar as a form of Aguiar or Aguilar. This evidence tends to support and corroborate the Examining Attorney’s position that D’AGUIAR’S will be perceived as a surname.

We note in addition that whether a term possesses the structure and pronunciation of a surname is a decidedly subjective determination. *See Adlon*, 120 USPQ2d at 1724 (rejecting an argument based on structure and pronunciation because “[w]ith respect to this difficult type of argument, we would require more objective evidence, whether from Applicant or the Examining Attorney, of how members of the public would perceive the structure and sound ... and whether they would be likely to perceive it as similar to the structure and sound of other surnames, common words or coined terms.”).

There is no evidentiary support in the record for the position that D’AGUIAR’S lacks the structure and pronunciation of a surname or would be viewed as anything other than a surname. *See Adlon*, 120 USPQ2d at 1719 (stating that consideration will be given to whether the public may perceive the mark to be primarily a meaningless, coined term only “if there is evidence to so indicate”). “In order to show that the public would perceive a proposed mark as a coinage, in the face of evidence establishing that the mark is a surname with no other recognized meaning, some

objective countervailing evidence of such a perception is required.” *Id.* at 1723. There is insufficient evidence in this case to support such a finding.

E. The refusal of registration is not barred by issue or claim preclusion.

Applicant argues:

The instant rejection is barred by the doctrine of collateral estoppel/res judicata.

Specifically, on January 26, 2015, Applicant filed an application for the same mark as the instant application which identified the same goods as the instant application which application was assigned Serial No. 86/814,310.[sic]⁷ In connection with that application, the Examining Attorney refused registration under Section 2(e)(4), the same basis for refusal here. Applicant ultimately appealed that refusal to the TTAB and submitted a brief in support of registration. The Examining Attorney defaulted in that Appeal by failing to submit a timely responsive brief. After the Examining Attorney defaulted, the Appeal was terminated and the application was allowed. Because the appeal was ultimately terminated in Applicant’s favor, collateral estoppel/res judicata should apply. Since the appeal was terminated because the Examining Attorney failed to file a brief, judgment should be entered in Applicant’s favor on res judicata grounds. *See Orouba Agrifoods Processing Co. v. United Food Import*, 97 USPQ2d 1310, 1313-15 (TTAB 2010) (dismissal of opposition for failure to file brief and take testimony operates as res judicata in cancellation against the now-registered mark where the cancellation claims are based on the same transactional facts as those asserted in the opposition).

In support of its position, Applicant submitted a screenshot from TTABVue showing the status of the appeal from application Serial No. 86514310 as terminated. (April 12, 2021 Request for Reconsideration at 8.) The application subsequently abandoned due to Applicant’s failure to file a Statement of Use.

We have applied claim preclusion where an applicant had already been refused registration for the same mark and goods in a prior ex parte proceeding, and the

⁷ The application in question is Serial No. 86514310.

applicant did not demonstrate a change of circumstances so as to justify not applying preclusion based on the prior judgment. *In re Anderson*, 101 USPQ2d 1912, 1916 (TTAB 2012); *see also In re Honeywell Inc.*, 8 USPQ2d 1600, 1601-02 (TTAB 1988) (“In general, there is nothing to preclude an applicant from attempting a second time in an ex parte proceeding to register a particular mark if conditions and circumstances have changed since the rendering of the adverse final decision in the first application.”).

However, the preclusion doctrines of res judicata, collateral estoppel, and stare decisis apply only in the context of applicants being precluded, and not the other way around, i.e., preclusion effect on the USPTO. *See, e.g., In re Solarwindow Tech., Inc.*, 2021 WL 877769 (TTAB 2021) (Res judicata applicable and applicant precluded from registration based on a prior final decision involving same applicant, mark, and goods or services, and no change in circumstances.) Applicant cites to no authority, and we are aware of none, for its apparent position that the Examining Attorney in an ex parte appeal of a refusal to register stands in the position of a plaintiff in an inter partes proceeding before this tribunal. *See In re MK Diamond Prods., Inc.*, 2020 USPQ2d 10882, 2020 BL 293819 (TTAB 2020) (Board’s “duty is to decide each case on its own merits” and “is not bound by decisions of examining attorneys who examined applications for an applicant’s previously registered marks based on different records.”), citing *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016) (“The PTO is required to examine all trademark applications

for compliance with each and every eligibility requirement ... even if the PTO earlier mistakenly registered a similar or identical mark suffering the same defect.”)

We keep in mind the USPTO’s role in the examination of trademark applications and ex parte appeals. Specifically, the USPTO, through the assigned examining attorney, is fulfilling its statutory obligation of determining an applicant’s entitlement to registration. 15 USC § 1062 (“Director shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made [whether] applicant is entitled to registration.”) In other words, the USPTO is performing an administrative function on behalf of the public by allowing the registration of registrable marks and disallowing unregistrable marks, thus helping maintain the integrity Principal or Supplemental registers. Thus, the USPTO is not a party in an ex parte appeal. *See In re McKee Baking Co.*, 219 USPQ 759, 760 (TTAB 1983) (“In an ex parte proceeding there is only one party [applicant]...”), overruled, in part, on a different ground in *In re Ferrero S.p.A.*, 22 USPQ2d 1800 (TTAB 1992).

In sum, the doctrines of res judicata, collateral estoppel or stare decisis do not preclude the USPTO from asserting the surname ground for refusal.

F. Conclusion

We find that the record, taken as a whole, establishes that the primary significance of D’AGUIAR’S to the purchasing public is merely that of a surname within the meaning of Section 2(e)(4).

Serial No. 88761927

Decision: The refusal to register Applicant's mark under Section 2(e)(4) of the Trademark Act is affirmed.